

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ALLEN SLEET,

Defendant-Appellant.

UNPUBLISHED

May 21, 1999

No. 206393

Kent Circuit Court

LC No. 97-002092 FH

Before: Sawyer, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

The Kent County Prosecutor charged defendant with escape from the Grand Rapids Correction Center (GRCC) in violation of MCL 750.193(1); MSA 23.390(1). Following a one-day trial, the jury found defendant guilty as charged. The trial court subsequently sentenced defendant as a fourth habitual offender to 2-1/2 to 10 years in prison. Defendant appeals as of right from his conviction and sentence. We affirm.

Defendant first argues that the trial court denied him his right to present a defense when it excluded evidence showing he was informed that the Michigan Department of Corrections (MDOC) maintains a policy of not prosecuting escapees who return late, so long as they return within twenty-four hours. We review evidentiary rulings for abuse of discretion. *People v Howard*, 226 Mich App 528, 542; 575 NW2d 16 (1997). As a general rule, relevant evidence is admissible and irrelevant evidence is inadmissible. MRE 402. Evidence is irrelevant if it has no tendency to make the existence of a material fact more or less probable than it would be without the evidence. MRE 401. Even if relevant, however, the trial court may choose to exclude evidence if the danger of misleading the jury outweighs any probative value of that evidence. MRE 403.

Defendant attempted to elicit testimony that defendant was advised that the MDOC has a policy of not prosecuting escapees who return to the center late, so long as they return within twenty-four hours. Under MCL 750.193(1); MSA 28.390(1),

[a] person imprisoned in a prison of this state who . . . leaves the prison without being discharged by due process of law . . . is guilty of a felony punishable by further imprisonment

Furthermore, MCL 791.265a; MSA 28.2325(1) states that

[t]he willful failure of a prisoner to remain within the limits of his . . . confinement or to return within the time prescribed to a[] . . . facility . . . shall be considered an escape from custody.

An inmate escapes from prison when he “removes himself from the imposed restraints over his person and volition with knowledge of, and intent to remove himself from, the restraints imposed.” *People v Benevides*, 204 Mich App 188, 192; 514 NW2d 208 (1994). An inmate need not “slip away . . . and avoid capture” to escape from custody. *People v Sheets*, 223 Mich App 651, 658; 567 NW2d 478 (1997). The relevant issue is not whether defendant knew his conduct would subject him to criminal liability, but rather, whether he knew his conduct violated the rules. *Id.* Accordingly, we conclude that the trial court did not abuse its discretion when it excluded evidence that defendant was told that the MDOC maintains a policy of not prosecuting escapees who return late.

Even if the trial court did abuse its discretion, we find that the error was harmless. See *People v Mateo*, 453 Mich 203, 212; 551 NW2d 891 (1996) (holding that a defendant is not entitled to reversal unless the trial court’s error was harmful). If anything, evidence that defendant was advised that the MDOC maintains a policy of not prosecuting escapees who return late, would tend to make it *more* likely that he willfully failed to remain within the terms of his confinement when he failed to return to the center at the appointed time than would evidence he knew he risked prosecution. Simply stated, had defendant known he risked prosecution, he would have returned on time. What is more important, the prosecutor’s theory of criminal liability was, not so much that defendant failed to return to the center at his scheduled time, but rather, that he went to an unauthorized location when he left the center. Had defendant returned to the GRCC before he was scheduled to return, he would still have been guilty of escape.

Defendant next argues that the trial court erred when it permitted defendant’s field agent to testify to the contents of his in-custody statements. To preserve a claimed evidentiary error for review, the aggrieved party must object on the record and state the legal basis for the objection. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994). An objection on one basis is not sufficient to preserve the issue on another basis. *People v Maleski*, 220 Mich App 518, 532; 560 NW2d 71 (1996). We find that defendant failed to effectively preserve this issue for review. Defendant objected to the testimony on the basis that defendant made the contested statement during the course of an administrative hearing. The trial court, however, found, as a matter of fact, that the statement was not made at an administrative hearing. Defendant does not challenge this finding on appeal. In addition, the trial court opined that *Miranda*¹ did not apply because a field agent is the functional equivalent of a probation officer. The trial court’s passing reference to another potential basis for exclusion is insufficient to preserve for defendant an argument on that basis.

We review unpreserved, constitutional error to determine whether the aggrieved party demonstrated that the error could have been decisive of the outcome. *Grant, supra*, 547. Defendant cannot demonstrate that any error the trial court may have committed when it permitted defendant's field agent to testify to the contents of his in-custody statements could have been decisive of the outcome. Because defendant was the focus of an investigation when Cornell discussed the major misconduct ticket with him, *Miranda* probably applied. See *People v Grevious*, 119 Mich App 403, 407; 327 NW2d 72 (1982). Even preserved, constitutional error, however, does not require reversal if it was harmless beyond a reasonable doubt. *People v Graves*, 458 Mich 476, 483; 581 NW2d 229 (1998). An error is harmless beyond a reasonable doubt when there is no reasonable possibility that the error complained of contributed to the verdict. *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538 (1994).

In the instant case, the MDOC's Absconder Recovery Unit arrested defendant and the prosecutor charged him with escape after he failed to return to the center at the appointed time. Defendant's field agent testified that defendant told him that a friend was giving him a ride back to the center after work when the car broke down and forced them to stop at defendant's mother's home. Because the crime of escape requires that a defendant *willfully* failed to remain within the terms of his confinement, defendant's explanation was exculpatory. That the prosecutor subsequently introduced evidence to suggest that defendant lied does not change the exculpatory nature of those statements. Consequently, there is no reasonable possibility that any error the trial court may have committed when it permitted defendant's field agent to testify to defendant's statements contributed to the guilty verdict. Compare *Anderson, supra*, 407 (finding "highly prejudicial and inculpatory nature" of the defendant's statements harmful).

Defendant finally argues that the trial court abused its discretion when it sentenced him to 2-1/2 to 10 years in prison for escape, fourth habitual offender. We review an habitual offender sentence for abuse of discretion. *People v Cervantes*, 448 Mich 620, 627; 532 NW2d 831 (1995). The instant offense is defendant's fifth felony conviction in twice as many years. Most recently, on January 30, 1995, defendant was convicted of first-degree retail fraud and sentenced to twelve months' probation. On March 21, 1996, defendant was convicted of violating his probation and sentenced to 2 to 4 years in prison. In the interim, while still a probation absconder, defendant was convicted of malicious destruction of property under \$100 and sentenced to an additional twelve months' probation. Furthermore, defendant twice tested positive for marijuana during his most recent incarceration. Finally, defendant committed the instant offense less than three months after the MDOC transferred him to the GRCC. Although we agree that the facts do not exemplify the most egregious escape imaginable, defendant has demonstrated a clear inability to conform his conduct to the requirements of the law. Consequently, we conclude that the trial court did not abuse its discretion when it sentenced defendant to a prison term well within the statutory limits. *People v Hansford (After Remand)*, 454 Mich 320, 326; 562 NW2d 460 (1997).

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Michael J. Talbot

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).